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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,380	06/23/2005	Isador H Lieberman	CCF-6389PCT2/US	2534
26294 7590 03/03/2009 TAROLLI, SUNDHEIM, COVELL & TUMMINO L.L.P. 1300 EAST NINTH STREET, SUITE 1700 CLEVEVLAND, OH 44114				
EXAMINER				
WOODALL, NICHOLAS W				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
03/03/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/540,380

Applicant(s)

LIEBERMAN, ISADOR H

Examiner

Nicholas Woodall

Art Unit

3775

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 and 19 is/are allowed.
- 6) ☒ Claim(s) 1-3, 20-24 and 29-33 is/are rejected.
- 7) ☒ Claim(s) 4 and 25-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/01/2008 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 22, 29, and 30 are rejected under 35 U.S.C. 102(e) as being anticipated by Weikel (U.S. Publication 2002/0032447).

Weikel discloses a device comprising an elongate member having a central axis and a means for articulating the head section relative to a tubular portion (see Figure 20 of the reference). The elongate member includes a tubular portion that extends between a proximal end and a distal end portion, wherein the distal end portion includes an articulatable head section (80) having a first end and a second end that articulates

about an axis transverse to the central axis. The second end terminates with at least one planar stop surface and a cutting edge projecting a predetermined height from and integrally formed along a midline of the at least one planar stop surface, wherein the remainder of the at least one planar stop surface limits movement of the cutting edge along the central axis to prevent cutting further than the predetermined height. The device further comprises a shaft member connected to the head section and extending coaxially within the tubular portion such that a terminal end projects beyond the proximal end of the elongate member, wherein the shaft and the head section are longitudinally moveable relative to the tubular portion (see Figure 26B of the reference).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 20, 23, and 31-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weikel (U.S. Publication 2002/0032447) in view of Spirer (U.S. Patent 5,871,204).

Weikel discloses a device comprising an elongate member having a central axis and a means for articulating the head section relative to a tubular portion (see Figure 20 of the reference). The elongate member includes a tubular portion that extends between a proximal end and a distal end portion, wherein the distal end portion includes an articulatable head section (80) having a first end and a second end that articulates

about an axis transverse to the central axis. The second end terminates with at least one planar stop surface and a cutting edge projecting a predetermined height from and integrally formed along a midline of the at least one planar stop surface, wherein the remainder of the at least one planar stop surface limits movement of the cutting edge along the central axis to prevent cutting further than the predetermined height. The device further comprises a shaft member connected to the head section and extending coaxially within the tubular portion such that a terminal end projects beyond the proximal end of the elongate member, wherein the shaft and the head section are longitudinally moveable relative to the tubular portion (see Figure 26B of the reference). Weikel fails to disclose the device wherein an articulating mechanism including complementary ratchet teeth between the head section and the tubular portion.

Weikel discloses a device wherein the device includes an articulating mechanism between the head section and the tubular portion including a pin and hole mechanism to allow pivoting of the head section relative to the tubular portion. Niernan teaches a device comprising a head section (12) connected to a tubular portion (46), wherein the device further comprises an articulating mechanism between the head section and the tubular portion including a pin and hole mechanism, wherein the head section includes a first set of ratchet teeth and the tubular portion includes a complementary set of ratchet teeth to allow the pivoting of the head section relative to the tubular portion. Because both Weikel and Niernan disclose devices comprising articulating mechanisms between a head section and a tubular section, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute

one articulating mechanism for the other in order to achieve the predictable results of allowing the head section to pivot relative to the tubular portion.

6. Claims 21 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weikel (U.S. Publication 2002/0032447) in view of Spirer (U.S. Patent 5,871,204) further in view of Nierman (U.S. Patent 4,880,015).

The device of Weikel as modified by Spirer discloses the device as claimed except for the articulating means including a wire member operatively coupled to the ratchet wheel and two levers. The device of Weikel as modified by Spirer discloses a device wherein the articulating means includes a wire operatively coupled to the head section, i.e. the ratchet wheel, and a terminal end extending out the proximal end of the elongate member to allow the head section to pivot/articulate relative to the tubular portion. Nierman teaches a device comprising an articulating means including a wire operatively coupled to a head section and extending through an elongate member, wherein one terminal end of the wire is connected to a handle and the other terminal end is connected to the elongate member in order to allow the head section to pivot/articulate relative to the tubular portion. Because both the device of Weikel as modified by Spirer and Nierman disclose device comprising articulation means between a head section and a tubular portion, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute one articulating means for the other in order to achieve the predictable results of allowing the head section pivot/articulate relative to the tubular portion.

Regarding the articulating means comprising a second lever attached to the wire, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Weikel as modified by Spiran as further modified by Nierman to further include a second handle connected to the second terminal end of the wire, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Allowable Subject Matter

7. Claims 18 and 19 are allowed.
8. Claims 4 and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

9. Applicant's arguments with respect to claims 1-4 and 18-33 have been considered but are moot in view of the new ground(s) of rejection. The examiner has provided new grounds of rejection as necessitated by the amendment.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for cited references the examiner felt were relevant to the application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Woodall whose telephone number is (571)272-5204. The examiner can normally be reached on Monday to Friday 8:00 to 5:30 EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas Woodall/
Examiner, Art Unit 3775
/Eduardo C. Robert/
Supervisory Patent Examiner, Art Unit 3733